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In re Application of :
Schiele :
Application No. 10/550,166 :
PCT No.: PCT/EP04/02971 :
Int. Filing Date: 22 March 2004 : DECISION
Priority Date: 21 March 2003 :
Atty. Docket No.: KW-17PCT :
For: Coating Device For Water-Based Lacquer :
That Is Dried By Near-Infrared Light :

This is in response to the "Request For Withdrawal Of Holding Of Abandonment" filed on 21 March 2007.

DISCUSSION

In a Decision mailed on 13 February 2007, applicants' request for withdrawal of the Notification of Defective Response filed on 22 August 2006 was treated as follows:

Review of the Image File Wrapper for this application reveals that the published international application (in the German language) includes 6 claims, while the translation filed on 20 September 2005 included 5 claims, as well as a marked-up copy of a set of 5 claims. No set of 6 claims, corresponding to the claim set present in the published international application, is currently of record in the application file. In the event that applicant believes that the absence of a 6-claim set is the result of error, submission of a copy of the 6-claim set and proof of its date of filing would be appropriate.

With regard to counsel's argument that the 5-claim set is the appropriate set of claims for the translation, counsel is advised that the translation of the international application referred to by 35 U.S.C. 371(c)(2) is a translation of the international application as filed (or as published), while the requirement to furnish translations of annexes to the international application arises separately, under 35 U.S.C. 371(c)(5). Since the published international application included 6 claims, while the translation only includes 5, the translation clearly is not a proper translation of the international application as filed (or published). Therefore, the translation does not satisfy the requirements of 35 U.S.C. 371(c)(2). As such, the mailing of both the Notification of Missing Requirements on 08 May 2006 and the Notification of Defective Response on 10 August 2006 was appropriate. Since applicants have not timely complied with the requirements set by those Notifications, this international application stands **ABANDONED** with respect to the national stage in the United States.

In response, applicants argue that

As stated in the response to Notification of Missing Requirements dated May 8, 2006, it is respectfully submitted that the application was filed on September 20, 2005 with an English translation of the original International application and an English translation of the application as amended during the International phase.

The English translation of the original International application contains claims 1-6 and the English translation of the amended version contains claims 1-5.

A copy of the translation of the International application as filed is attached hereto. Also attached is a copy of the translation of the application as amended.

In view of the fact that a translation of the International application was filed with the original papers, it is respectfully submitted that the abandonment of the application should be withdrawn.


In view of applicants' arguments, an additional review of the contents of the IFW has been conducted but, as was the case previously, no copy of a 6-claim claim set appears to have been present in the application file prior to receipt of the instant (21 March 2007) correspondence. Although applicants suggest that a translation of the originally-filed claims was submitted along with the correspondence filed on 20 September 2005, no additional evidence (e.g., a properly itemized and date-stamped return postcard receipt) has been adduced to show that such a translation was in fact received. In the absence of such evidence, it would not be appropriate to conclude that the translation of the 6 original claims was actually timely filed in the USPTO and, as such, this international application remains **ABANDONED** with respect to the national stage in the United States.

CONCLUSION

The application remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision (extendable under 37 CFR 1.136(a)).

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration.



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